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RHMCSUU/FBI WASHINGTON DC

UNCLAS SECTION 01 OF 05 BEIJING 002455

SIPDIS

State for EAP/CM - JYamamoto and EB/IPE - EFelsing

USTR for China Office - AWinter; IPR Office - RBae; and OCG
- SMcCoy, ACelico

Commerce for National Coordinator for IPR Enforcement -
CIsrael

Commerce for MAC 3204/LRigoli, ESzymanski

Commerce for MAC 3043/McQueen

LOC/Copyright Office - MPoor

USPTO for Int'l Affairs - LBoland, EWu

DOJ for CCIPS - Asharrin
DOJ for SChembtob
FTC for Blumenthal
FBI for LBryant

DHS/ICE for IPR Center - DFaulconer

DHS/CBP for IPR Rights Branch - Pizzeck
SENSITIVE
SIPDIS

E.O. 12958: N/A

TAGS: [KIPR](#) [ETRD](#) [ECON](#) [WTRO](#) [PGOV](#) [CH](#)

SUBJECT: USPTO U/S DUDAS AND SUPREMEPEOPLE'S COURT DISCUSS
DEEPER COOPERATION ON PR PROTECTION AND INNOVATION

Summay

11. (SBU) Commerce Under Secretary and Director of the United States Patent and Trademark Office Jon Dudas met with Supreme People's Court (SPC) Deputy President Zhang Jun on March 28 to discuss intellectual property rights (IPR) protection and innovation in China. The two discussed China's criminal law, judicial interpretation (JI), statistics exchange, and technical assistance programs. Zhang also made reference to a new agenda for IPR protection in China, offering only that the details will soon be forthcoming. End Summary.

12. (SBU) Zhang opened by saying that China's focus on building an innovation-based society is a recent development in the country's history. As a result, while legislation to protect IPR and innovation has improved, China's foundation of economic and technological

development, and judicial practices, remains relatively weak. He added his view that progress on IPR, including early measures to penalize infringement, have to date been satisfactory, but that the courts must continue to study judicial best practices to improve IPR protection.

Judicial Interpretation

¶3. (SBU) U/S Dudas expressed his admiration for improvements in China's IPR enforcement, which he credited in part to a judicial interpretation issued by the SPC in ¶2004. He added that the United States nevertheless remains concerned over criminal threshold levels, valuations, and the courts' use of probation in lieu of imprisonment. U/S Dudas stated that further review and revisions of the 2004 judicial interpretation might be necessary. Zhang responded that, compared with the 1998 JI that preceded it, the 2004 JI intensified crackdowns on IPR crimes by reducing criminal thresholds and better addressing China's IPR situation. He explained that the effectiveness of the measures - and of increased law enforcement efforts - was evidenced by a 30 percent increase in the number of IPR crimes prosecuted from 2004 to 2005. Zhang admitted, though, that China should increase the penalties for such crimes. (Note: On April 5, the SPC and SPP released a supplement to the 2004 judicial interpretation related to criminal intellectual property infringement. The JI(II) lowered criminal thresholds of copyright materials by 50 percent, from 1,000 to 500 illegal copies of copyrighted works. The JI (II) also clarified the definitions

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"reproduction and distribution" reference in Article 217 of the Criminal Law. According to the new interpretation, "reproduction and distribution" include the acts of reproducing OR distributing, or both reproducing AND distributing. End Note.)

Probation

¶4. (SBU) Zhang continued that the use of probation in IPR cases is in accordance with China's existing criminal code and the principle of Chinese law to allow criminals the opportunity to repent and reform rather than serving jail time. He said probation is often used for misdemeanors, first time criminals, and criminals who show remorse, and that the option is used carefully and has a strong deterrent effect. U/S Dudas agreed that maximum deterrence should be a key goal, and that the United States generally seeks to achieve this by lowering criminal thresholds and increasing penalties, particularly on IPR crimes. U/S Dudas requested that the SPC provide statistics that might more clearly demonstrate China's recent progress in improving IPR enforcement, and offered to provide United States data that might be useful to those efforts. Both parties agreed to coordinate the sharing of statistics between Mission Senior IPR Attache and Chief Judge Jiang Zhipei of China's IPR Tribunal.

Internet Copyright

¶5. (SBU) U/S Dudas explained that United States law changes regularly to address the rapid advance of Internet technologies, and questioned how China is preparing to deal with online copyright infringement. Zhang admitted that Internet-related IPR crimes are occurring with increasing frequency, including infringements of the right to personality, reputation, and property. He lamented that legislation always lags behind the situation on the ground, and described the SPC's greatest challenge as anticipating

problems that will arise as a result of future technological developments. Zhang added that China is not experienced in investigating Internet crimes, collecting evidence in such cases, or meting out penalties, but that laws will eventually be changed to address new concerns. Citing an example, Zhang wondered whether the online theft of virtual property should be handled in the same way as theft of tangible property, with similar punishment. He said that, although such issues are not yet included in judicial interpretation, some investigators and

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"grassroots" judges have handled such cases in progressive ways with controversial judgments. In that way, he pointed out, judicial practices - and not necessarily legislation - are moving lawmaking forward in China. At the suggestion of U/S Dudas, both parties agreed to address such emerging issues, and both parties agreed to explore a cybercrime program to share experiences among judges and experts from both countries.

Universal IPR Court for China?

16. (SBU) Judge Randall Rader of the United States Court of Appeals for the Federal Circuit offered that the United States has greatly benefited from a uniform, national policy on IP administered by a unified court, and that several other countries have adopted a similar model. He explained that such specialized courts allow judges to develop the technical expertise to more effectively administer IP law, and suggested that China might benefit from such a system. Zhang acknowledged that an IP court would raise the professionalism of the SPC by increasing technical understanding and competence and that - "generally speaking" - he supports the idea and its many benefits. However, he added that such a court will not be established in China until after a broad-based reform of the judicial system as a whole, at which point the judiciary will be "up to a specific standard." He joked that Judge Jiang in particular strongly supports the establishment of such a court, as he would serve as its presiding judge.

17. (SBU) Short of establishing a unified IP court, Zhang explained that the SPC works hard to improve its IPR chambers through increased staffing, stability, and expertise. He added that China's IPR judges are some of its most qualified and educated. Zhang welcomed Judge Rader's offer to bring his entire IPR court to China in the future for a dialogue and information exchange.

Technical Assistance

18. (SBU) U/S Dudas suggested that petitioners and applicants in the United States would benefit from a better understanding of China's judicial system, and that a program to invite speakers from China to the United States also would be useful. Zhang agreed, and also responded favorably to U/S Dudas' offer to bring Chinese officials to Washington to attend the Patent and Trademark Office's

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Global IPR Academy.

China's National IPR Strategy

19. (SBU) In closing, Zhang emphasized that the protection of IPR is in line with China's national interests and a

common ground between the United States and China. He said that the SPC issued a "judicial document" in January 2007 that will comprehensively improve IPR protection and lead to more crackdowns against infringers. Zhang said the details of the plan will soon be forthcoming (Note: Zhang may have been referring to China's national strategy on IPR protection, which the State Intellectual Property Office on March 27 announced will be released in the first half of 2007. End Note.), but offered that it will include three principles: equity and fairness; uniformity of standards of judicial administration; and equal protection to domestic and foreign rights holders. He further suggested that, under the new plan, civil and administrative law (not criminal law) will bear first responsibility to deal with IPR. Zhang went further to say that judicial protection is not the most important element in fighting IPR crimes, but that a more integrated approach, including the general strengthening of the rule of law and the harmonious and socially equitable development of China's economy, will serve to reduce the incidence of all crimes.

Meeting Participants

¶10. (U) U.S. Participants:

Commerce Under Secretary for Intellectual Property and
USPTO Director Jon Dudas
U.S. International Intellectual Property Enforcement
Coordinator Chris Israel
USPTO Director of the Office of International Relations
Lois Boland
Embassy Senior IPR Attache Mark Cohen
Embassy IPR Attache Todd Thurwachter
USPTO Attorney-Advisors: Elaine Wu, Jasemine Chambers, Tim
Browning, Conrad Wong; and Trade Policy Analyst Susan Tong
Embassy Economic Affairs Second Secretary Geoff
Siebengartner (notetaker)
Interpreter
U.S. Court of Appeals for the Federal Circuit Judge Randall
Rader

¶11. (U) Chinese Participants:

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SPC Vice President Justice Zhang Jun
SPC IPR Tribunal Chief Judge Jiang Zhipei
SPC IPR Tribunal Deputy Judge Kong Jiangjun
SPC Research Center Judge Li Hongjiang
SPC Administrative Tribunal Judge Gan Wen
SPC Second Criminal Tribunal Judge Liu Miaoxiang
Interpreter

Comment

¶12. (SBU) Following USTR's April 9 announcement to bring two WTO cases against China, the extent of future bilateral cooperation on IPR and related issues remains uncertain. As anticipated, some Chinese officials who in the past have supported cooperation with the United States on IPR protection and enforcement have expressed dissatisfaction at the announcement. Further, it is likely that officials who may be willing to continue to work together may face internal pressure to limit such efforts. End Comment.

¶13. (U) U/S Dudas' delegation has cleared this report.